Software Rights Archive, LLC v. Google Inc. et al Doc. 166 Att. 19

EXHIBIT 19

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SOMTAI TROY CHAROENSAK and MARIANA ROSEN, Individually and On Behalf Of All Others Similarly Situated Plaintiffs, v. APPLE COMPUTER, INC. Defendant.	Case No. 05-CV 37-JW DECLARATION OF LEE MORSE

I, Lee Morse, hereby declare:

1. I am Director of Emerging Technology for Creative Labs, Inc. located at 1901 McCarthy Blvd., Milpitas, CA 95935. The facts set forth in this declaration are true and correct and, if called as a witness, I could and would testify thereto.

2. This declaration is provided in lieu of the deposition of Creative Labs, Inc., noticed by plaintiffs in this matter to be taken on January 12, 2007. Creative served written objections to the subpoena, which are not waived, and hereby affirmed, by this declaration.

3. Creative Labs, Inc. is the United States subsidiary of its Singapore-based parent company, Creative Technology Ltd. ("Creative"). Creative Labs, Inc. is the sales, marketing, training and customer support organization for Creative in the Americas.

4. Creative is a worldwide leader in digital entertainment products for the personal computer and the Internet. Creative was founded in Singapore in 1981 with the vision that multimedia would revolutionize the way people interact with their personal computers. Among

its product lines, Creative offers for sale the highly acclaimed Zen and MuVo lines of portable digital audio players.

5. Portable digital music players are portable devices that enable their users to listen to digital audio recordings without requiring users to carry any external media, such as a compact discs, cassette tapes, or cartridges.

6. Since January 1, 2003 until the present, Creative Labs, Inc. has offered for sale in the United States the following lines of portable digital audio players: Nomad, Nomad Jukebox, Zen, MuVo and Portable Media Center. These portable digital audio players are or have been available for sale through Creative's website, www.creative.com as well as through other retailers and a number of distributors. Since January 1, 2003, Creative has sold approximately 5.5 million portable digital audio players in the United States.

7. Generally, there are two sources from which consumers can legally acquire digital music files for playback on their portable digital music players. The first is to copy compact discs ("CDs") that the consumers have purchased at traditional brick-and-mortar music stores. With few recent exceptions, these audio CDs are not copy protected, and the digital music files contained within these audio CDs can be copied onto a digital music player for playback by the user. The second source for legally acquiring digital music files for playback on portable digital audio players is comprised of legal online music stores that sell digital music files through the Internet. Apple's iTunes Music Store is an example of such an online store. In order for Creative to be successful in selling its line of portable digital music players, it is important for the customer to be able to legally purchase music online.

8. Every file or song purchased from the iTunes Store is encoded with digital rights management (also referred to as "DRM") technology created by Apple. This technology is not

recognized by other digital media players other than Apple's digital media players. As such, songs purchased from the iTunes Store cannot be directly recorded onto or played back on Creative's line of portable digital music players, which Creative believes has a negative impact on its sale of digital music players.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19 day of January, 2007 in Milpitas, California.

Lee Morse